IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRED WILSON, JR.	:	CIVIL ACTION
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY	:	
and	:	
TRANSPORT WORKERS UNION OF PHILADELPHIA LOCAL 234	:	NO. 98-3411

MEMORANDUM AND ORDER

HUTTON, J. January 26, 1999

Presently before this Court is the Motion to Dismiss Count I of Complaint by Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") (Docket No. 4), Plaintiff's response thereto (Docket No. 7), and the Motion to Dismiss Count II of Complaint by Defendant Transport Workers Union, Local 234 ("Local 234") (Docket No. 8) and Plaintiff's response thereto (Docket No. 9). For the foregoing reasons, SEPTA's Motion to Dismiss Count I of Complaint is **DENIED** and Local 234's Motion to Dismiss Count II of Complaint is **GRANTED in part and DENIED in part**.

I. BACKGROUND

This case involves claims of discrimination in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq. (1994). The Complaint brought by Fred Wilson, Jr.

("Wilson" or "Plaintiff") consists of two counts. Count I alleges discrimination under the ADA against Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA"), and Count II alleges discrimination under the ADA against Defendant Transport Workers Union, Local 234 ("Local 234"). SEPTA seeks to dismiss Count I of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. In the alternative, SEPTA seeks to dismiss Plaintiff's claim for punitive damages. Local 234 seeks to dismiss Count II of the Complaint because it does not specify the nature of relief sought against Local 234. Local 234 also moves this Court to order Plaintiff to file and serve an Amended Complaint in which he sets forth the nature of the relief he seeks against Local 234.

The Complaint alleges the following facts, which are viewed in the light most favorable to the Plaintiff. Wilson worked for SEPTA as a bus operator. On November 12, 1995, he tested positive for alcohol in a random drug and alcohol test. Consequently, Wilson was suspended by SEPTA from his employment for a six weeks. He also enrolled in addiction awareness classes at a facility known as "Rehab After Work."

On June 13, 1996, Wilson again tested positive for alcohol in a random test. Wilson was then admitted to Livingrin Hospital where he obtained in-patient treatment for alcoholism until June 28, 1996. Immediately after his discharge from the

hospital, he received out-patient treatment for two weeks. Shortly after his discharge from Livingrin Hospital, Wilson was informed that SEPTA had discharged him from his employment for his alleged violation of Section 1203 of the Collective Bargaining Agreement between SEPTA and Local 234 (the "CBA").

Local 234 filed a grievance on his behalf pursuant to Article II of the collective bargaining agreement. On October 17, 1996, following a Labor Relations hearing, SEPTA upheld Plaintiff's Discharge for violation of Section 1203 of the CBA, and deemed his termination effective as of that date.

On July 17, 1998, SEPTA filed a Motion to Dismiss Count I of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Plaintiff filed his response thereto on August 12, 1998. On September 1, 1998, Local 234 filed a Motion to Dismiss Count II of the Complaint because the prayer for relief set forth under Count II of the Complaint seeks relief against SEPTA. On September 17, 1998, the Plaintiff filed his response thereto. The Court now considers these motions.

II. DISCUSSION

A. Motion to Dismiss Count I of Complaint

1. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed.

R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),\[1] this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved

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3. Rule 12(b)(6) provides that:

> Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

2. Merits

Under the ADA, an employer is prohibited from discriminating against a "qualified individual with a disability, because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a) (1994). A "qualified individual with a disability" is defined as "an individual with a disability, who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Id. § 12111(8). In adjudicating cases brought under the ADA, courts apply the burden-shifting framework applicable to cases brought under Title VII of the Civil Rights Act of 1964. See id. § 12117; McNemar v. Disney Stores, Inc., 91 F.3d 610, 619 (3d Cir. 1996), cert. denied, 117 S. Ct. 958 (1997).

There are three steps to this framework. First, the plaintiff bears the burden of establishing a prima facie case of discrimination. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Second, the burden then shifts to the

defendant, who must offer a legitimate non-discriminatory reason for the action. See id. Third, if the defendant satisfies this burden, the plaintiff must then come forth with evidence indicating that the defendant's proffered reason is merely a pretext. See id.

A plaintiff presents a prima facie case of discrimination under the ADA by demonstrating: (1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an otherwise adverse employment decision as a result of discrimination. See Gaul v. Lucent Techs., Inc., 134 F.3d 576, 580 (3d Cir. 1998).

In the instant action, SEPTA argues that dismissal of Count I of Plaintiff's Complaint is appropriate because the Plaintiff cannot establish the first element of the prima facie case of disability discrimination. SEPTA contends that the Plaintiff cannot prove that he was a qualified individual with a disability at the time SEPTA discharged him. According to SEPTA, the ADA does not cover a transportation employee who is discharged for being under the influence of alcohol while on duty. The statute defines disability as:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
> (B) a record of such an impairment; or
> (C) being regarded as having such impairment.

§ 12102(2). The Court now considers whether the Plaintiff fails to establish as a matter of law the first prong of the prima facie case of disability discrimination.

a. "Disability" Under the ADA

(1) Is the Plaintiff "Disabled" Under the ADA?

The ADA defines a "disability" as "a physical . . . impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2)(A) (1994) (emphasis added). "Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(I) (1997).\[2] More specifically, "'[m]ajor life activities' are those basic activities that the average person in the general population can perform with little or no difficulty . . . includ[ing] sitting, standing, lifting, [and] reaching." 29 C.F.R. Pt. 1630, App. § 1630.2(I).

"Whether an impairment substantially limits a major life activity depends on the following factors: (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or expected long term impact." Sherrod v. American Airlines, Inc., 132 F.3d 1112, 1119

3. "Because the ADA does not define many of the pertinent terms, we are guided by the Regulations issued by the Equal Employment Opportunity Commission ("EEOC") to implement Title I of the Act." Deane v. Pocono Med. Ctr., 142 F.3d 138, 143 n.4 (3d Cir. 1998) (citations omitted).

(5th Cir. 1998) (citing 29 C.F.R. § 1630.2(j)(2)); Brown v. Lankenau Hosp., No. CIV.A.95-7829, 1997 WL 277354, at * 3 (E.D. Pa. May 19, 1997). "For an impairment to substantially limit major life activities, the impairment must be 'a significant restriction' on the major life activity." Taylor v. Phoenixville Sch. Dist., No. CIV.A.96-8470, 1998 WL 133628, at * 4 (E.D. Pa. Mar. 20, 1998) (quoting Nave v. Woolridge Constr., No. CIV.A.96-2891, 1997 WL 379174, at * 4 (E.D. Pa. June 30, 1997)). As the EEOC regulations explain:

> [A]n impairment is substantially limiting if it significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity. Thus, for example, an individual who, because of an impairment, can only walk for very brief periods of time would be substantially limited in the major activity of walking. An individual who uses artificial legs would likewise be substantially limited in the major life activity of walking because the individual is unable to walk without the aid of prosthetic devices.

29 C.F.R. Pt. 1630, App. § 1630.2(j).

Wilson asserts that, as an alcoholic, he is a disabled individual under the Americans with Disabilities Act. Schmidt v. Safeway Inc., 864 F. Supp. 991, 996 (D.Or. 1994) ("[a]lcoholism is a disability covered by the ADA"). See also Cook v. Rhode Island Dept. of Mental Health, Retardation, and Hospitals, 10 F.3d 17, 24 (1st Cir. 1993) ("the [Rehabilitation] Act indisputably applies to

numerous conditions that may be caused or exacerbated by voluntary conduct, such as alcoholism").

Significantly, Congress did not exclude alcoholics from ADA protection as it did current illegal drug users. See 42 U.S.C. § 12114(a). In section 12114(a), Congress specifically excluded employees "currently engaging in the illegal use of drugs" from the protection of the Act by excluding them from the definition of a "qualified individual with a disability." Thus, had Congress sought to exclude alcoholics from the statute's coverage, it could have easily done so. Thus, the fact that Plaintiff's consumption of alcohol violated the federal regulations that govern the operators of public transport vehicles, 49 C.F.R. §§ 641.1 et seq. (1994), is of no moment for purposes of this motion.

Wilson thus states that at all times material to the complaint, he was a "qualified individual with a disability," as defined by 42 U.S.C. § 12111, because he was an alcoholic who, with reasonable accommodation, could perform the essential functions of his job. He alleges that SEPTA failed to make reasonable accommodations for his alcoholism in violation of § 12112(a), insofar as SEPTA discharged him after he had successfully completed a supervised alcohol rehabilitation program and no longer engaged in the illegal use of alcohol. Accordingly, the Plaintiff satisfies the first prong of the ADA disability definition.

(2) Is the Plaintiff Regarded as Disabled Under the ADA?

The ADA further provides that an individual suffers from a "disability" if he is "regarded as having such an impairment." 42 U.S.C. § 12102(2)(C). "The focus of such an inquiry is not on the plaintiff's actual abilities but instead, is 'on the reactions and perceptions of the persons interacting or working with [the plaintiff].'" Taylor, 1998 WL 133628, at * 7 (quoting Kelly, 94 F.3d at 108-09)). This Court recently stated that under Section 12102(2)(C):

> a plaintiff would be entitled to the protection of the ADA even if he does not actually have a substantially limiting impairment, as long as he can show that defendants regarded him as having such an impairment. See 29 C.F.R. § 1630.2(l). Where, as here, defendants concede that plaintiff has an impairment, plaintiff must still show that defendants perceived his impairment to be one which posed a substantial limitation on one of his major life activities. See, e.g., Forrisi v. Bowen, 794 F.2d 931, 934 (4th Cir. 1986). The mere fact that an employer is aware of an employee's impairment is insufficient to demonstrate either that the employer regarded the employee as disabled or that the perception caused the adverse employment action. Kelly v. Drexel Univ., 94 F.3d 102, 109 (3d Cir. 1996).

Nave, 1997 WL 379174, at *8.

In this case, on November 12, 1995, after testing positive for alcohol, SEPTA suspended Plaintiff from his job for six weeks. Having suspended Plaintiff after the first positive test, SEPTA certainly regarded Plaintiff as having an alcohol-

induced impairment. Thus, the Plaintiff satisfies the third prong of the ADA disability definition.

(3) Is the Plaintiff Reported as Disabled Under the ADA?

A plaintiff attempting to meet the second prong of the ADA disability definition--having a record of impairment--must demonstrate "a history of, or [be] misclassified as having, a mental or physical impairment that substantially limits one or more major life activity." 29 C.F.R. § 1630.2(k). Summary judgment in favor of the employer is appropriate if the employee's record of impairment does not demonstrate a substantial limitation in major life activities. See Popko v. Pennsylvania State Univ., 994 F. Supp. 293, 299 (E.D. Pa. 1998).

In the present case, the Court finds that dismissal of Count I of Plaintiff's Complaint is not appropriate with regard to this prong of ADA disability definition. As noted above, Plaintiff's suspension constituted an impairment which prevented him from working, a record of which existed as of June 13, 1996, the date on which Plaintiff tested positive a second time for alcohol. Plaintiff satisfies the second prong of the ADA definition of disability and, therefore, SEPTA's Motion to Dismiss Count I of Plaintiff's Complaint is denied.

3. Punitive Damages

Plaintiff agrees to withdraw his claim for punitive damages. Thus, SEPTA's motion as it regards to punitive damages is denied as moot.

B. Motion to Dismiss Count II of Complaint

Local 234 argues that Count II of Plaintiff's complaint should be dismissed because the prayer for relief set forth under Count II seeks relief against SEPTA rather than against Local 234. In its Motion to Dismiss, Local 234 also moves this Court to Order Plaintiff to amend the prayer for relief in Count II of the Complaint. The Plaintiff acknowledges the error and joins in Local 234's request for leave to file and serve an Amended Complaint to set forth the nature of the relief Wilson seeks against Local 234.

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). Because the Plaintiff seeks to amend the complaint for the first time and prior to a responsive pleading, the Plaintiff may amend his complaint.

An appropriate Order follows.

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v.	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and TRANSPORT WORKERS UNION OF PHILADELPHIA LOCAL 234	:	NO. 98-3411

O R D E R

AND NOW, this 26th day of January, 1999, upon consideration of the Motion to Dismiss Count I of Complaint by Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") (Docket No. 4), Plaintiff's response thereto (Docket No. 7), and the Motion to Dismiss Count II of Complaint by Defendant Transport Workers Union, Local 234 ("Local 234") (Docket No. 8) and Plaintiff's response thereto (Docket No. 9), IT IS HEREBY ORDERED that SEPTA's Motion to Dismiss Count I of Complaint is **DENIED** and Local 234's Motion to Dismiss Count II of Complaint is **GRANTED in part and DENIED in part**.

It IS FURTHER ORDERED THAT Plaintiff SHALL file his Amended Complaint amending the prayer for relief in Count II of the Complaint within ten (10) days from the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.